2:Scott G-5 (1870's-1909)1910 APl Burma
Burmese AP4

CHAPTER LV

JUDICIAL ADMINISTRATION

BUDDHIST law as it was administered in Upper Burma dates from the beginning of the now existing world. The first crime was theft; the first punishment was a scolding, speedily followed by a thrashing; and the first judge was Mahā Thamada, elected by vote of the people to be ruler over them. No doubt there were written laws then, but they have not come down to us. The written code in use was given to the world by Manu, originally a cow-herd, but afterwards a minister. He found them written in large characters on the walls of another world, to which he was transported when in an ecstasy. These laws formed the first code. There have been since compiled from them eight other codes in the kingdom of Prome and other ancient states in Burmah. The last, called Mahā Manu Thaya Shwe Myin, was drawn up on the foundation of the sixth kingdom of Ava, in the year 1137 B.E. (1775 A.D.), by Minhkaung Gyi, who, with the aid of a learned monk, went through and carefully revised all the codes. These laws in their integrity are those which governed Upper Burma and now govern the whole of Burma in so far as they regulate social relations. The codes were written in Sanskrit and Magadha, a language usually called Pali through an error. The name Pali signifies really not a *language*, but "The Canon," handed down to Buddhists, as composed by pious disciples from the teachings of Shin Gautama. The Magadha or Pali code accepted is called Manu Wunnana, from its writer and compiler, a minister of state in Ava. It is looked upon as a commentary on, or a key to, the codes, and contains the whole of the laws.

671
673
681
671
719

2:Scott G-5 (1870's-1909)1910 APl Burma
Burmese AP4

671 Besides the codes there exist also twenty standard collections of decisions, leading cases in which judgment was delivered by kings, queens, princesses, and ministers. These are by some regarded as obsolete, by many lugyis, however, considered to have still the force of law. The best known of these are:—

The decisions of Mahawthata, the embryo Budh.
" Widuya, one of the ten great avatars.
" Thudhammasari.
" Kutha.
" Dwuttabaung, first king of Prome.
" Sinbyushin.

671 The laws given by Manu to the ruler Mahā Thamada
673 numbered altogether eighteen. From these all others have been framed. The eighteen original laws had regard to:— 1. Borrowing money. 2. Deposits of money. 3. Stealing and altering the appearance of property and selling it. 4. When a gift may be had back on demanding it, and when not, there being six kinds of gifts. 5. Deciding the wages of carpenters. 6. Deciding the wages of labourers. 7. Breach of promise. 8. Deciding disputes between the owners of cattle and neat-herds. 9. Settling disputed boundaries. 10. Deciding whether property purchased may be returned. 11. Accusations. 12. Theft or concealment. 13. Assault. 14. Murder. 15. Deciding the proper conduct of husband and wife. 16. The question of slavery. 17. Deciding if cock-fighting, betting, or gambling debts shall be paid. 18. Partition of inherited property.

671 Manu also laid down that persons appointed to administer the laws should not only have a competent knowledge of the code, but should also possess fourteen qualifications, as follows:—1. To decide in strict accordance with the law. 2. To be respectable. 3. To be of moral character. 4. To inspire awe. 5. To command love. 6. To be of good birth. 7. To be religious. 8. To be virtuous. 9. To be truthful. 10. To be talented. 11. To be devoted to the study of the law. 12. To possess honesty of purpose and intention. 13. Knowledge of the principal

2:Scott G-5 (1870's-1909)1910 AP1 Burma
Burmese AP4

immediate superior a certain fixed sum, determined without regard to favourable seasons, health of the population, or anything of that kind, and as each man was judge over the people in his charge, it may naturally be supposed that the general population did not lead a very happy life. Complaints might be made against extortion and illegal decisions, but the heads of tracts, if they had the money, could always stifle inquiry.

Some of the laws deduced from Manu's eighteen original enactments strike one as being rather singular. For example, if two men quarrel and fight and one of them is killed, there is no penalty; but if a third party interferes and kills or injures one of the original combatants, he must pay the ordinary fine for murder, or causing hurt. Should he himself be killed, the other two are subject to no penalty. When a man is guilty of adultery with another man's wife, if it be proved to be the first time, he must pay the fine for adultery, usually the price of the woman, assessed according to the judge's opinion; if it is her second offence, he only pays half the fine; but if she has been guilty for a third time, he pays no penalty at all.

If one man curses another and some evil happens, he must pay twice the price of the damage incurred; thus, if the man dies he must pay twice the value of a man; two cows if a cow dies, and so on.

When the king dies there is a general pardon of all offences, and a remission of fines, except in the case of debt. There are also seven things which cannot be reclaimed after the death of the king under whom they were promised or given. These are:—1. Deposits. 2. Pledges. 3. Money paid wrongly by the parties in a law-suit. 4. Things carried off by violence, or seized upon without sufficient title. 5. Promises. 6. Things secretly stolen. 7. Things that have been voluntarily given up by one man and taken possession of by another.

The decisions of Mahawthata, Princess Thudhammasari, and others are of little value from a strictly legal point of view. They are chiefly of a religious character. The princess begins by saying that her cases are to be considered as guides to nobles and judges as to the line they

2:Scott G-5 (1870's-1909)1910 AP1 Burma
Burmese AP4

should follow. To an English barrister they would seem to be excerpts from the *Arabian Nights*, and as far from precedents as it is possible to imagine anything. The play of Mahawthata tells of the Lord Buddha in the birth in which he exhibited the most consummate wisdom and acumen, as in Wethandaya he embodies the spirit of liberality. In both these births, as in his last, Shin Gautama spoke from the moment he was brought forth. As Wethandaya he immediately entreated his mother for something to give in charity to the poor, and distributed forthwith the four hundred pieces of silver she gave him. As Mahawthata he appeared in the world with a plant in his hand, and, holding it up, said, "This is medicinal herb." Throughout all this life he was constantly displaying extraordinary wisdom, jealous ministers being in the habit of propounding difficult cases to him. Thus he was shown a log of sha (*Acacia Catechu*), from which cutch, stupidly called *Terra Japonica*, is obtained, and asked which was the upper end and which the lower end. He solved the problem by putting it in the water, when the lower end, as being the heavier, sank deeper in the water. Another case is exactly similar to the famous Biblical decisions of Solomon. These decisions, though they may be interesting, are hardly valuable as standard leading cases.

Some of the definitions of crimes in the Dhammathat are a little singular. Thus among the ten descriptions of assault are mentioned: "saying in regard to a lunatic, a drunkard, or a half-witted person who is ill, that he will die, and he dies"; "refusing restitution for cattle killed"; "standing near an assailant." To avoid being summoned for one of the twenty-seven kinds of abuse one must be very circumspect, for there is ground for action if one says Hé to a man, as the Mandalay people were fond of shouting Hé Kalā after Europeans. It is equally risky to address a man as nin, *i.e.* in the third person; to say that he is "deficient in strength"; that he is a stutterer, bow-legged, broken-down, squinting, or afflicted with white spots on his body; that he is heretical, or, finally, that he is given to using bad language.

The niceties of the law may be illustrated by the following case from the Talaing Dhammathat. A man in search